

REFERENCE TITLE: escrow interest on trust accounts

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2733

Introduced by
Representatives Nichols, Weiers J

AN ACT

AMENDING SECTIONS 6-834 AND 41-3955, ARIZONA REVISED STATUTES; RELATING TO
ESCROW AGENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 6-834, Arizona Revised Statutes, is amended to
3 read:

4 **6-834. Deposit of monies**

5 A. Unless ~~all of the parties to the escrow otherwise instruct~~ the
6 escrow agent ~~in writing~~ DETERMINES THAT THE MONIES HELD WOULD EARN INTEREST
7 INCOME IN EXCESS OF COSTS, the escrow agent shall deposit and maintain all
8 monies deposited in AN escrow INTEREST ON TRUST ACCOUNT to be delivered on
9 the close of the escrow or on any other contingency in a bank, savings bank
10 or savings and loan association doing business in this state and the escrow
11 agent shall keep all of the escrow monies separate, distinct and apart from
12 monies belonging to the escrow agent. Notwithstanding the parties'
13 instructions to the escrow agent, the escrow agent shall not deposit the
14 escrow monies in an institution outside the United States. When deposited,
15 the monies shall be designated as "escrow INTEREST ON TRUST accounts" or
16 given some other appropriate designation indicating that the monies are not
17 the monies of the escrow agent. These monies shall be deposited immediately
18 IN AN INTEREST BEARING ESCROW INTEREST ON TRUST ACCOUNT on receipt or as soon
19 thereafter as is reasonably practicable.

20 B. A person shall not knowingly keep or cause to be kept any monies in
21 any bank or savings and loan association under the heading of "escrow
22 accounts" or any other name designating the monies as belonging to the
23 clients of any escrow agent, except actual escrow monies deposited with such
24 escrow agent.

25 C. Escrow property is not subject to execution or attachment on any
26 claim against the escrow agent.

27 D. Not later than three business days after receipt of any escrow
28 monies, the escrow agent shall ~~provide to each depositing buyer or seller,~~
~~adequate notice of his right to earn interest on all deposited monies.~~ The
29 ~~notice shall accurately set forth the following information with respect to~~
30 ~~this right:~~

31 ~~1. A brief description of the depositor's right to earn interest on~~
~~escrowed monies through an interest bearing deposit account.~~

32 ~~2. The dollar charge that may be imposed by the escrow agent solely to~~
~~set up the interest bearing account.~~

33 ~~3. A good faith estimate of the amount of interest that may be earned~~
~~during the life of the escrow account, or an example of a typical transaction~~
~~calculated on a one thousand dollar deposit, using the prevailing savings~~
~~account interest rate for a thirty day period.~~

34 ~~4. A brief description of how the interest bearing account can be~~
~~established, including the name, address and telephone number of the escrow~~
~~agent to be contacted.~~ DETERMINE WHETHER THE DEPOSITED MONIES SHOULD BE
35 PLACED IN AN ESCROW INTEREST ON TRUST ACCOUNT OR A SEPARATE ACCOUNT ON WHICH
36 THE BUYER OR SELLER WOULD EARN NET INTEREST. THE ESCROW AGENT SHALL CONSIDER
37 THE FOLLOWING INFORMATION:

1 1. THE AMOUNT OF THE MONIES TO BE DEPOSITED.
2 2. THE EXPECTED DURATION OF THE DEPOSIT, INCLUDING THE LIKELIHOOD OF
3 DELAY IN THE MATTER FOR WHICH THE MONIES ARE HELD.

4 3. THE RATES OF INTEREST OR YIELD AT FINANCIAL INSTITUTIONS WHERE THE
5 MONIES ARE TO BE DEPOSITED.

6 4. THE COST OF ESTABLISHING AND ADMINISTERING A SEPARATE NONESCROW
7 INTEREST ON TRUST ACCOUNT FOR THE BUYER'S OR SELLER'S BENEFIT, INCLUDING
8 SERVICE CHARGES, THE COSTS OF THE ESCROW AGENT'S SERVICES AND THE COSTS OF
9 PREPARING ANY TAX REPORTS REQUIRED FOR INCOME ACCRUING TO THE BUYER'S OR
10 SELLER'S BENEFIT.

11 5. THE CAPABILITY OF FINANCIAL INSTITUTIONS TO CALCULATE AND PAY
12 INCOME TO INDIVIDUAL BUYERS OR SELLERS.

13 6. ANY OTHER CIRCUMSTANCES THAT AFFECT THE ABILITY OF THE FUNDS TO
14 EARN A NET RETURN.

15 E. An escrow agent shall not receive from any depository institution
16 any interest earned or other benefit from monies deposited with an escrow
17 agent in connection with any escrow. Nothing in this subsection prohibits
18 the escrow agent from receiving accounting, data processing or other services
19 directly related to the administration of escrow accounts.

20 F. ~~For the purposes of this article, "adequate notice" means a printed
21 notice to the depositing buyer or seller that sets forth the pertinent facts
22 clearly and conspicuously. The notice shall be printed on the escrow
23 instructions or on an independent document and given to the depositing
24 customer in a manner reasonably assuring the customer's receipt of the
25 notice.~~

26 F. INTEREST EARNED FROM ESCROW INTEREST ON TRUST ACCOUNTS SHALL BE
27 ADMINISTERED AS FOLLOWS:

28 1. THE DEPOSITORY INSTITUTION SHALL MAINTAIN ESCROW INTEREST ON TRUST
29 ACCOUNTS AND DETERMINE INTEREST RATES AND DIVIDENDS IN THE SAME MANNER AS
30 SPECIFIED FOR INTEREST ON LAWYERS' TRUST ACCOUNTS PURSUANT TO RULES ADOPTED
31 BY THE SUPREME COURT.

32 2. THE RATE OF INTEREST ON THE ESCROW INTEREST ON TRUST ACCOUNT SHALL
33 BE COMPARABLE WITH INTEREST RATES OF OTHER REGULAR DEPOSITORS AT THE BANK,
34 SAVINGS BANK OR SAVINGS AND LOAN ASSOCIATION HOLDING THE ACCOUNT.

35 3. THE INTEREST EARNED, MINUS ANY REASONABLE SERVICE CHARGE OF THE
36 FINANCIAL INSTITUTION AND PAYMENT TO THE ESCROW AGENT FOR ACCOUNTING, DATA
37 PROCESSING OR OTHER SERVICES DIRECTLY RELATED TO THE ADMINISTRATION OF ESCROW
38 ACCOUNTS, SHALL BE REMITTED AT LEAST QUARTERLY IN THE SAME MANNER AS
39 SPECIFIED FOR INTEREST ON LAWYERS' TRUST ACCOUNTS PURSUANT TO RULES ADOPTED
40 BY THE SUPREME COURT. INTEREST REMITTED SHALL NOT BE LESS THAN A RATE OF ONE
41 PER CENT ANNUAL PERCENTAGE YIELD UNLESS THE RATE ON OTHER SIMILAR TYPES OF
42 ACCOUNTS WITH COMPARABLE DEPOSITS IS LESS THAN ONE PER CENT IN WHICH CASE THE
43 INTEREST REMITTED SHALL BE ONE-HALF PER CENT LESS THAN THAT RATE.

44 4. AT THE TIME OF REMITTANCE, A STATEMENT SHALL BE PROVIDED SHOWING
45 ALL OF THE FOLLOWING:

1 (a) THE NAME OF THE TITLE INSURANCE AGENT OR COMPANY FOR WHOM THE
2 REMITTANCE IS SENT.
3 (b) THE ACCOUNT NUMBER.
4 (c) THE RATE OF INTEREST APPLIED.
5 (d) THE SERVICE CHARGES.
6 (e) THE PROCESSING CHARGES FOR THE ESCROW AGENT AND COMPANY.
7 (f) THE NET AMOUNT REMITTED FOR EACH ACCOUNT.
8 (g) THE REPORTING PERIOD.
9 (h) THE TOTAL AMOUNT REMITTED FOR EACH ACCOUNT.
10 (i) THE TOTAL NUMBER OF ACCOUNTS.
11 (j) THE AVERAGE ACCOUNT BALANCE FOR EACH MONTH OF THE PERIOD FOR WHICH
12 THE REPORT IS MADE.

13 (k) THE NAME OF THE BANK, SAVINGS BANK OR SAVINGS AND LOAN ASSOCIATION
14 AND CONTACT INFORMATION RELATING TO THE ESCROW INTEREST ON TRUST ACCOUNT.

15 5. WITHIN TEN BUSINESS DAYS AFTER RECEIVING THE ESCROW INTEREST ON
16 TRUST ACCOUNT, THE RECEIVING ENTITY SHALL REMIT FIFTY PER CENT OF THE TOTAL
17 MONIES TO THE HOUSING TRUST FUND ESTABLISHED BY SECTION 41-3955. THE MONIES
18 SHALL BE USED TO ASSIST WITH THE DEVELOPMENT OF AFFORDABLE HOUSING, PROGRAMS
19 THAT PROVIDE ASSISTANCE THROUGH EDUCATION, LEGAL SERVICES AND DIRECT
20 FINANCIAL ASSISTANCE RELATING TO THE STABILITY OF HOUSING AND CONSUMER
21 FINANCES AND THE ADMINISTRATION OF THE ESCROW INTEREST ON TRUST ACCOUNT. THE
22 REMAINING FIFTY PER CENT SHALL BE USED FOR THE ADMINISTRATION AND DELIVERY OF
23 GRANTS RELATING TO LAW RELATED EDUCATION AND LEGAL SERVICES IN A MANNER
24 CONSISTENT WITH RULES ADOPTED BY THE SUPREME COURT AND WITH A PRIORITY OF
25 PROVIDING LEGAL ASSISTANCE TO VICTIMS OF CRIME, INCLUDING VICTIMS OF DOMESTIC
26 VIOLENCE AND SEXUAL ASSAULT.

27 G. THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS STATE MAY NOT
28 PURSUE A DISCIPLINARY MATTER AGAINST AN ESCROW AGENT SOLELY BECAUSE THE
29 ESCROW AGENT MADE A GOOD FAITH DETERMINATION OF THE APPROPRIATE ACCOUNT IN
30 WHICH TO DEPOSIT OR INVEST ESCROW MONIES.

31 Sec. 2. Section 41-3955, Arizona Revised Statutes, is amended to read:

32 41-3955. Housing trust fund; purpose

33 A. The housing trust fund is established, and the director shall
34 administer the fund. The fund consists of monies DEPOSITED PURSUANT TO
35 SECTION 6-834, MONIES from unclaimed property deposited in the fund pursuant
36 to section 44-313 and investment earnings.

37 B. On notice from the department, the state treasurer shall invest and
38 divest monies in the fund as provided by section 35-313, and monies earned
39 from investment shall be credited to the fund.

40 C. Fund monies shall be spent on approval of the department for
41 developing projects and programs connected with providing housing
42 opportunities for low and moderate income households and for housing
43 affordability and Arizona housing finance authority programs. Pursuant to
44 section 44-313, subsection A, a portion of fund monies shall be used
45 exclusively for housing in rural areas.

1 D. In approving the expenditure of monies, the director shall give
2 priority to funding projects that provide for operating, constructing or
3 renovating facilities for housing for low income families and that provide
4 housing and shelter to families that have children.

5 E. The director shall report annually to the legislature on the status
6 of the housing trust fund. The report shall include a summary of facilities
7 for which funding was provided during the preceding fiscal year and shall
8 show the cost and geographic location of each facility and the number of
9 individuals benefiting from the operation, construction or renovation of the
10 facility. The report shall be submitted to the president of the senate and
11 the speaker of the house of representatives no later than September 1 of each
12 year.

13 F. Monies in the housing trust fund are exempt from the provisions of
14 section 35-190 relating to lapsing of appropriations.

15 G. An amount not to exceed ten per cent of the housing trust fund
16 monies may be appropriated annually by the legislature to the department for
17 administrative costs in providing services relating to the housing trust
18 fund.

19 H. For any construction project financed by the department pursuant to
20 this section, the department shall notify a city, town, county or tribal
21 government that a project is planned for its jurisdiction and, before
22 proceeding, shall seek comment from the governing body of the city, town,
23 county or tribal government or an official authorized by the governing body
24 of the city, town, county or tribal government. The department shall not
25 interfere with or attempt to override the local jurisdiction's planning,
26 zoning or land use regulations.